IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Single Bench

WRIT PETITION NO.256 OF 2006

PETITIONER

Madanendra Pratap Singh, S/o Late Rajendra Pratap Singh,aged about 51 years, working as In-charge Chief Municipal Officer, Nagar Panchayat, Pratappur, Dist. Surguja (Chhattisgarh)

P.R. No. 262/06
Presented by Shri Ajit Kush Naidu
dated 16-1-06

V E R S U S

RESPONDENTS

1. State of Chhattisgarh through Secretary, Department of Urban Administration Development, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

2. Municipal Corporation, Ambikapur (Surguja) through Commissioner, Municipal Corporation, Ambikapur Surguja (Chhattisgarh)

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नोटरी शकुन्तला (चांदनी श्रीवास्तव) M.P. 16/10/10 2000 जिला बिलासपुर छत्तीसगढ़ राज्य

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 256/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6-2-2006

Shri Sanjay K. Agrawal, counsel for the petitioner.

Shri Vivek Sharma, P.L., for the State/respondent no.1.

Shri Sameer Behar, counsel for respondent no.2.

Heard.

Learned counsel for the petitioner submits that the petitioner was appointed in the year 1983 as Fire Brigade Superintendent. Vide Annex.P/2 dated 31/1/1995, his cadre was changed as Revenue Inspector. Learned counsel further submits that the petitioner is entitled for promotion on the post of Chief Municipal Officer. Learned counsel also submits that the petitioner has been officiating on the post of Chief Municipal Officer and though vacancies do exist in the State of C.G., his case is not being considered for promotion.

Learned counsel for the petitioner referred to the Madhya Pradesh (Chhattisgarh) State Municipal Service (Executive) Rules, 1973. Rule 5 of the said Rules says that recruitment of service shall be made by direct recruitment as well as by promotion and the Schedule appended shows that by promotion of C.M.O.s of Class AM.Cs. having at least 7 years experience on that post. It is also pointed out that under Rule 13 of the said Rules, the Committee shall meet atleast once in every year to consider all cases for promotion and submit its recommendation to the State Government. After the consideration, the Committee shall draw up a list of persons recommended for promotion and send the same to the State Government within a month from the date of meeting.

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It is submitted that under Rule 5, the petitioner is entitled for consideration. It is also submitted that the petitioner has completed ten years as Revenue Inspector and he has not yet been considered for promotion.

Learned counsel for the petitioner placed reliance upon the judgment of the Apex Court in the case of ***State of Tripura and others vs. K.K. Roy*** reported in ***2004 AIR SCW 1***, and contended that in the said case avenues were not there and they were made available but in the instant case the avenues are there and the petitioner has been deprived of the promotion. It is further contended that the Apex Court in the said case has held that the promotion is a condition of service. Even when the post was not available, the State was directed to create the post. It also contended that the petitioner has also made representations to the State of M.P. & State of C.G. vide Annexures P/7 & P/9 respectively, but the same have not been considered so far.

The judgment of the Apex Court in the case of ***K.K. Roy*** (supra) is pertinent. In para 6 of the said judgment, the Apex Court held as under:

> *"6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 & 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully*

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well that there was no avenue of promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India, Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of twelve years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principles."

Learned counsel for the petitioner submits that for the present the petitioner may be given an opportunity of filing the detailed representation before the competent authority of the respondents, which shall be considered on its own merits in accordance with law.

Not opposed.

Having considered and without expressing any opinion on the merits of the case, in the opinion of this Court, ends of justice will be served if a direction is given to the petitioner to make a detailed representation raising his grievances before the competent authority of

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H/-	the respondents along with a copy of the petition and this order within a period of two weeks from today, and on such representation being filed, the competent authority of the respondents shall decide the same on its own merits in accordance with law as early as possible preferably within a period of two months from the date of receipt of the representation. If the grievance still remains, the petitioner may avail the remedy available at law. With the aforesaid observations, this petition stands disposed of. Certified copy as per rules. Sd/- Fakhruddin Judge	

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1/2/08